JD-23-06
Worcester, MASS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

SAINT GOBAIN ABRASIVES, INC.

and

INTERNATIONAL UNION OF AUTOMOBILE AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, REGION 9A, AFL-CIO

and

WAYNE GREGOIRE

Case Nos. 1-CA-41623
1-RD-2003
1-RD-2049
1-RM-1258

Susan Lawson and Robert J. Debonis, Esqs, for the General Counsel.
Lawrence D. Levien and Joshua B. Waxman, Esqs. (Akin, Gump, Strauss, Hauer and Feld LLP), of Washington, D.C. and *Patrick L. Egan, Esq., (Jackson Lewis LLP),* of Boston, Massachusetts, for Respondent.
Thomas W. Meiklejohn, Esq. (Livingston, Adler, Pulda, Meiklejohn & Kelly, P.C.), of Hartford, Connecticut, for the Union.
Glenn M. Taubman, Esq., (National Right to Work Legal Defense Foundation), of Springfield, Virginia, for Petitioner Gregoire.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Boston, Massachusetts, on June 13-17, July 25-28, September 28-30 and November 21-22, 2005. This matter concerns objections filed by the International Union of Automobile Aerospace and Agricultural Workers of America (UAW) and the General Counsel's complaint alleging violations of Section 8(a)(5) and (1) of the Act. The UAW objects to conduct allegedly affecting the results of an election conducted on January 27 and 28, 2005. In that election, bargaining unit employees voted by a margin of 350 to 309 to terminate the Union's status as their collective bargaining representative. The Union seeks an order for a second election and an order requiring Respondent to continue bargaining with it.

The General Counsel's Complaint was issued on February 8, 2005. It was amended on June 13, 2005, after a bilateral settlement resolving all issues in case 1-CA-42140 and certain portions of case 1-CA-41623. The remaining allegations of the latter case arise from an unfair labor practice charge initially filed by the Union on March 15, 2004 and amended thereafter. The principal issue in the case is the legality of the hiring of large numbers of temporary employees by Respondent beginning in October 2003, allegedly without providing the Union notice and an opportunity to bargain.

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs and reply briefs filed by the General Counsel, Respondent, the Union and the National Right to Work Legal Defense Fund, I make the following

Findings of Fact

The Saint Gobain facility in Worcester and the Union's certification in December 2001

Saint Gobain is large multinational manufacturing company which has its headquarters in Paris, France. It has 140,000 employees world-wide and 25,000 in North America at 140 locations. In 1990, St. Gobain purchased the Norton Company of Worcester, Massachusetts, which manufactures a number of products, including abrasive wheels. These wheels are used to grind metal in numerous industrial applications. At the time of this hearing St. Gobain employed approximately 1600 employees at its Worcester facility, often referred to as its Greendale campus.[2]

In August 2001, the full-time and regular part-time production and maintenance employees in the Abrasives Branch of the Worcester facility selected the Union as their collective bargaining representative in an NLRB representation election.[3] In that election, 406 bargaining unit employees voted for the Union; 386 voted against the Union and there were 18 challenged ballots. St. Gobain filed objections to conduct affecting the result of that election. These objections were predicated on letters sent to employees by Representative James McGovern, the U. S. Congressman representing Worcester, in support of the Union. The Board overruled these objections on December 20, 2001 by a vote of 2-1, and certified the Union, *Saint Gobain Abrasives, Inc.,* 337 NLRB 82 (2001).

Bargaining unit employees generally work in either the bonded abrasives or superabrasives production process. Employees in the bonded processes are further classified as working in either the precision (vitrified) process, or the organic (rough) process. Richard Zeena, Respondent's Human Relations Manager for Bonded Abrasives, analogized the production process for grinding wheels to baking a cake. Both processes start with mixing ingredients, which are then are formed in a mold (with a power press in the case of grinding wheels), heated, finished (analogous to icing a cake), packed and shipped.

Approximately 200-215 unit employees in bonded abrasives work in Plant 7. They manufacture precision (vitrified) wheels used to grind away relatively small amounts of excess metal. Another 200-215 unit employees in bonded abrasives work in Plant 8 producing rough (organic) grinding wheels used to hack off relatively large amounts of excess metal. The approximately 130 unit employees in superabrasives work in a third building. Superabrasives employees manufacture high-performance, high-precision grinding wheels that use materials such as natural and synthetic diamonds as the cutting agent. A wheel produced in superabrasives may cost as much as $40,000. The wheels produced in bonded abrasives are generally much less expensive.

Another 150-200 unit employees work in plant 2 (a small bonded precision wheel production unit), plant 4 (a packing, shipping and receiving operation) and possibly other areas

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[1] The parties' motions to correct the transcript are granted.

[2] Greendale is the section of Worcester in which the plant is located.

[3] The International Brotherhood of Teamsters apparently conducted an unsuccessful organizing campaign at the Worcester facility prior the UAW drive.

of the Worcester facility.

The representation election won by the Union occurred weeks before the September 11, 2001 terrorist attack on the World Trade Center and Pentagon. That attack exacerbated the decline in the American economy that had started in 2000. Many of Saint Gobain's customers, such as those in the aerospace, steel and automotive industries, were particularly hurt by this downturn in the economy. As a result the demand for Saint Gobain's abrasive wheels declined significantly.

Procedural History leading to the decertification election in January 2005

After the Board certified the Union, collective bargaining began in February 2002. Even before that, upon learning of the certification, Wayne Gregoire, an anti-union bargaining unit employee, contacted the National Right to Work Legal Defense Foundation. Gregoire and other anti-union employees formed the Grass Roots Coalition Against the Union (GCATU) which circulated decertification petitions in 2002 and in January 2003. On February 3, 2003, exactly one year after bargaining commenced, Gregoire filed a decertification petition (1-RD-2003) with the Board. The Regional Director notified all parties several days later that further processing of the decertification petition was blocked due to several outstanding unfair labor practice charges.

On October 2, 2003, the Regional Director dismissed Gregoire's decertification petition based on allegations in a Complaint filed by the General Counsel that Respondent had refused to bargain in good faith with the Union by unilaterally implementing an interim health insurance program in mid-November 2002. Gregoire requested Board review.

The Union filed the charge on which this proceeding is based on March 15, 2004. It alleged very generally violations of Section 8(a)(5) and (1), including that Respondent made unilateral changes and reneged on agreements reached during negotiations.

Administrative Law Judge David Evans issued a decision on April 27, 2004, finding that Respondent did not violate Section 8(a)(5) by implementing the interim health insurance program. However, he found Saint Gobain violated the Act in January 2002 by changing the scheduled work hours of bargaining unit employees from 8 hours to 7 ½ hours.

On July 8, 2004, the Board ruled that the Regional Director was required to hold an evidentiary hearing to determine whether there was a causal connection between the Union's loss of employee support and Respondent's alleged unlawful conduct in implementing its interim health insurance program, *Saint Gobain Abrasives, Inc.,* 342 NLRB No. 39. This hearing was held in September 2004, but was rendered moot when the Board affirmed Judge Evans' decision on October 29, 2004, *Saint Gobain Abrasives, Inc.,* 343 NLRB No. 68.[4]

Bargaining Unit Employee James Mitchell, another member of the GCATU, filed a decertification petition, 1-RD-2049 on September 20, 2004, the first day of the "causation" hearing. Saint Gobain filed petition 1-RM-1268 on October 7, 2004, questioning whether the Union had the support of a majority of the bargaining unit employees. All three petitions remained blocked by the Board's finding that Respondent violated the Act in reducing employees' hours.

[4] The United States Court of Appeals for the First Circuit enforced the Board's order with regard to the remedy selected for the unilateral reduction of work hours, *NLRB v. Saint-Gobain Abrasives, Inc*., 426 F. 3d 455 (1st Cir., October 19, 2005).

On November 22, 2004, the Union amended its March 15, 2004 charge to specifically allege that Respondent violated Section 8(a)(5) and (1) by transferring bargaining unit work to large numbers (more than 100) temporary employees.

The Union filed a request to proceed with an election on December 23, 2004. As stated previously, the Union lost the election held on January 27-28, 2005 by a margin of 350-309. On February 4, 2005, the Union filed objections to conduct affecting the election. The hearing on the objections was consolidated with the hearing on the unfair labor practices alleged in the General Counsel's Complaint, which concerns some, but not all of the same issues.

The parties' 2002 tentative agreement regarding the hiring of temporary employees

Between February 2002 and January 14, 2005, Saint Gobain and the Union met in approximately 150 collective bargaining sessions. Carol Knox was the principal negotiator for the Union. Attorneys Thomas R. Smith and Patrick Egan of the Jackson Lewis law firm served as the principal negotiators for Saint Gobain. While they reached a number of tentative and interim agreements, the parties never concluded a collective bargaining agreement and there was no resolution regarding economic issues.

On June 11, 2002, in the context of discussions regarding seniority, the Union proposed that no temporary or casual employees would be allowed to work in bargaining unit positions, without the Union's permission. Saint Gobain made a counter-proposal on seniority that imposed no limit on its use of temporary employees. On June 25, 2002, company negotiator Smith stated that Saint Gobain had a history of using employees from within the bargaining unit and from outside the bargaining unit to fill positions temporarily.

Saint Gobain presented the Union with a proposed agreement regarding temporary employees on July 30, 2002. The parties discussed the difference between so-called "Norton temporaries," who were hired directly by Respondent and "agency temporaries," who were nominally employed by a manpower agency. Respondent's proposal only dealt with the "Norton temporaries" and provided that these temporaries would be hired for a specific project or period of time, and would not be retained for more than a year without the mutual consent of the parties.

On August 29, 2002, the parties signed off on a tentative agreement that had been modified and augmented in negotiations, GC Exh. – 18 pages SG 00544-00545. The agreement provides that Norton temporaries are to be hired for a specific project or specific period, generally for no more than six months and that they are to be laid-off before regular employees. Further the agreement provides that a Norton temporary who works for more than six continuous months will automatically be converted to regular employee status.

Agency temporaries, however, were to be used for a period of twelve weeks or less and were to be offered overtime only after overtime had been offered to comparable regular employees. Saint Gobain agreed to provide the Union will a monthly list of all Norton and agency temporary employees.

The 2003 Voluntary Separation Agreement and the course of collective bargaining from October 2003 until January 2005.

At the September 25, 2003 bargaining session, a year after concluding the temporary employee tentative agreement, Saint Gobain informed the Union that due to a decline in demand for its grinding wheels, it wanted to abolish sixty positions in its bonded abrasives

operation and 5-10 in superabrasives. Respondent proposed to accomplish this first by releasing any temporary employees in these positions and then offering regular employees an opportunity to voluntarily separate from the company with a severance/benefit package. Saint Gobain provided the Union with a list of the positions being considered for elimination, GC Exh. 19.

On September 29, Saint Gobain provided the Union with a revised list with 54 positions under consideration for elimination. Included on this list were two third shift rescreener positions in plant 8. These positions are the subject of Complaint paragraph 15, which is discussed in more detail later in this decision. The General Counsel alleges that Respondent failed to comply with the terms of the Voluntary Separation Agreement in mid-2004 by hiring agency temporary employees to fill these two positions.

Respondent's chief negotiator, Patrick Egan, assured the Union that it would terminate all temporary employees in the positions designated for elimination.[5] Pursuant to the tentative agreement with regard to temporary employees, Saint Gobain provided a list to the Union on October 3, 2003, which contained the names of 16 agency temporary employees, Exh. G.C. – 25.

On October 20, 2003, the parties signed an interim agreement on voluntary separation, GC Exh. 27.[6] It provided that there were to be no involuntary lay-offs until the voluntary separation of up to 60 employees was completed. The parties agreed that Respondent would not fill positions it proposed to eliminate with subcontractors, temporary employees or other non-unit employees—except by mutual agreement.

Saint Gobain presented the Union with a comprehensive contract proposal at a bargaining session on November 4. The Union called a strike that day which lasted eight days, from Friday, November 7, through Friday, November 14, 2003. The strike ended without any concessions or change of position on the part of Saint Gobain.

By November 13, Sixty-six bargaining unit employees applied for voluntary separation; 54 from the bonded abrasives branch; ten from superabrasives. Respondent accepted all 66 applications for voluntary separation. By the end of February 2004, all these volunteers had separated from the company. However, the number of positions Saint Gobain considered for elimination pursuant to the agreement steadily declined. By September 3, 2004, Respondent was proposing to eliminate 38, rather than 60 positions.

Saint Gobain made its final contract offer to the Union on December 5, 2003. That offer was still "on the table" when bargaining ceased in January 2005. Respondent requested a final best offer from the Union in December 2004. The Union agreed to provide one pending a survey of the bargaining unit. The UAW did not submit a final offer to Respondent prior to the cessation of bargaining and the decertification election.

Facts relating to Complaint paragraph 12 and Objection number 7

[5] The Union contends that Respondent, by Egan, promised to terminate all temporary employees. It is evident from other things said during bargaining that the Union suspected that Egan misspoke and that the Union understood that there was no such commitment.

[6] Respondent also reduced the size of its workforce through voluntary separations in 2001 and 2002.

The number of agency temporary employees increases dramatically after the voluntary separation agreement; the Union files a charge and an amended charge.

There were 19 or 20 agency temporary employees working at the Worcester facility on the first day of the strike; this number increased steadily thereafter. On March 15, 2004, the Union filed unfair labor practice charge 1-CA-41623, which alleged that since about October 2003, Saint Gobain had failed and refused to bargain collectively and in good faith with the Union by engaging in direct dealing with bargaining unit employees, implementing unilateral changes in wages, hours and terms and conditions of employment, engaging in regressive bargaining, reneging on agreements and refusing to respond, and delaying its response, to information requests.

The Union filed a third amended charge on November 22, 2004, which included the following allegations:

> Within the 6 months prior to the filing and service of the charge, and continuing thereafter, the Employer has unilaterally transferred bargaining unit work to large numbers (more than 100) of temporary agency employees without notifying the Union, or providing it with an opportunity to bargain, and has refused to recognize the Union as bargaining representative for the temporary employees.
>
> Within 6 months prior to the filing and service of the charge, and continuing thereafter, the Employer has discriminatorily eroded the Union's bargaining unit by transferring bargaining unit work to large numbers (more than 100) of temporary agency employees.

The General Counsel filed the original complaint on February 8, 2005, alleging that Respondent violated Section 8(a)(5) and (1) by unilaterally transferring bargaining unit work to large numbers (more than 100) temporary agency employees since about March 16, 2004. This allegation was amended at trial to allege a violation since October 2003.

Timeline with Regard to Temporary Employees

Date	Number of "Agency" Temporary Employees[7]
January 2000	25 (approximately)
Mid-2000	90 (approximately)
October 2000	18 (approximately)
August 2001-Union wins election	10-15
December 2001-Union certified	10-15
June 2002 First Discussion of Temporary Employees.	
August 29, 2002 Tentative Agreement signed regarding temporary employees.	
Late summer/early fall 2003	38 approximately
October 3, 2003	16
October 20, 2003 Voluntary Separation Agreement signed.	

[7] There were no "Norton" temporary employees working in bargaining unit positions at the facility during this time period.

November 4, 2003 STRIKE November 7-14, 2003	20 (approximately)
December 1, 2003	24
February 5, 2004 Unfair Labor Practice Charge filed March 15, 2004	37
March 31, 2004	40-41
April 28, 2004	71
May 17, 2004	80
June 18, 2004	94
August 30, 2004	117 (approximately)
November 20, 2004 Filing of Third Amended Charge November 22, 2004 which specifically alleges unilateral transfer of bargaining unit work to large numbers of temporary employees	134 (approximately)
January 8, 2005	104

Analysis relating to the temporary employee issue

Generally applicable legal principles

When negotiating a collective bargaining agreement with the authorized representative of its employees, an employer is obliged pursuant to Section 8(a)(5) of the Act to maintain the status quo with regard to mandatory subjects of bargaining, *NLRB v. Katz,* 369 U.S. 736 (1962); Our *Lady of Lourdes Health Center,* 306 NLRB 337 (1992). During negotiations, an employer's obligation to refrain from unilateral changes in the wages, hours and other terms and conditions of employment of bargaining unit employees extends beyond the duty to provide notice to the Union and an opportunity to bargain about a subject matter. It encompasses a duty to refrain from implementing such changes at all, absent overall impasse on bargaining for the agreement as a whole, *Bottom Line Enterprises,* 302 NLRB 373 (1991).

There are exceptions to this general rule. One is the "long-standing practice exception." This exception is based on the recognition that certain unilateral changes do not interfere with collective bargaining because they represent the status quo, *Queen Mary Restaurants Corp. v. NLRB,* 560 F.2d 403, 408 (9th Cir. 1977); *The Courier Journal* 342 NLRB No. 113 (2004) n. 1. Employers may also implement unilateral changes when a union engages in tactics designed to delay bargaining. Additionally, when economic exigencies compel prompt action, an employer may be entitled to implement such unilateral changes. However, even when "economic exigencies compelling prompt action" justify unilateral changes, the employer must provide the union adequate notice and an opportunity to bargain, *RBE Electronics of S.D.,* 320 NLRB 80, 82 (1995).

Respondent's hiring of temporary employees to do bargaining unit work is a mandatory subject of bargaining.

In *Torrington Enterprises,* 307 NLRB 809 (1992), the Board rendered a comprehensive opinion on the issue of whether the unilateral subcontracting of bargaining unit work is a mandatory subject of bargaining and thus violative of Section 8(a)(5) and (1). Interpreting the U.S. Supreme Court decisions in *Fibreboard Corp. v. NLRB,* 379 U.S. 203 (1964) *and First*

National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981), the Board held that Torrington violated the Act in laying off two bargaining unit employees and replacing them with non unit employees and independent contractors—without giving prior notice to the union and providing the union with an opportunity to bargain about the decisions and their effects on the unit employees.

In two recent decisions, *Sociedad Espanola de Auxilio Mutuo y Beneficencia, de P. R.,* 342 NLRB No. 40 (2004) and *St. George Warehouse, Inc,.* 341 NLRB No. 120 (2004) *enfd.* 420 F. 3d 294 (3d Cir. August 23, 2005), the current Board has reaffirmed the holdings in *Torrington. St. George Warehouse* involves facts somewhat similar to the instant case. Sometime after the union won a representation election, St. George decided to stop hiring new employees and to use temporary agency employees instead. As unit employees quit or were fired for cause, St. George did not replace them. As a result, the bargaining unit decreased from 42 to 8 within a very short period of time. Judge Stephen Davis, whose decision was affirmed by the Board with regard to this issue, wrote:

> The Respondent's actions in substituting agency employees for its bargaining unit employees as they leave their employment will make it possible for it to eliminate the existing bargaining unit and dilute its bargaining strength. Eventually…as each unit employee leaves his job, a temporary agency worker will replace him. Ultimately, the unit will be eliminated. Absent discriminatory intent, nothing in the law prevents the Respondent from making and implementing that decision. What the law requires is that it first offer to bargain about such a decision.

341 NLRB No. 120 (slip opinion at 21-22).

Legal Principles as applied to the Instant Case

Assuming that Respondent's hiring of numerous temporary employees in 2003 and 2004 to perform bargaining unit work was a change, i.e., a departure from its established past practices, it clearly violated Section 8(a)(5) and (1). At no time during this time period did Respondent give the Union advance notice of its intent to hire additional temporaries. It merely informed the Union that it hired additional temps, on numerous occasions, after the fact. Thus, Respondent presented the Union with a "fait accompli."

An employer cannot implement a change and then claim that a union waived its right to bargain by failing to do so retroactively, *Intersystems Design Corp.,* 278 NLRB 759 (1986).[8] "To be timely, the notice must be given sufficiently in advance of actual implementation of the change to allow a reasonable opportunity to bargain," *Ciba-Geigy Pharmaceuticals Division,* 254 NLRB 1013, 1017 (1982). A finding of "fait accompli" will prevent a finding that a failure to request bargaining is a waiver, *Pontiac Osteopathic Hospital,* 336 NLRB 1021, 1023-24 (2001).[9]

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[8] To be effective, a waiver of statutory bargaining rights must be clear and unmistakable. Wavier can occur in any of three ways, by express provision in a collective bargaining agreement, by the conduct of the parties, (including past practices, bargaining history and action or inaction) or by a combination of the two. In a case where the parties have not concluded their first collective bargaining agreement, the Board decides the waiver issue solely on the evidence of the parties' conduct, *American Diamond Tool,* 306 NLRB 570 (1992).

[9] In light of this legal conclusion, I believe it is unnecessary to resolve the contested versions of the May 18, 2004 telephone conversation between Carol Knox and Dennis Baker. However, in the event that higher authority disagrees with me, I conclude that Baker's testimony that Knox

Continued

Respondent, however, argues that 1) the Complaint is barred by Section 10(b) of the Act; 2) that its hiring of the temporary employees in 2003 and 2004 was not a change from its established past practices; 3) that if it had an obligation to bargain with the Union over the hiring of temps, it met its obligation and 4) finally, that even if it didn't meet its statutory obligation that the Union waived its bargaining rights regarding temporary employees.

The Complaint regarding Respondent's hiring of temporary employees is not barred by Section 10(b) of the Act.

The Union's charge filed on March 15, 2004 alleged, among other things, that Respondent violated the Act by implementing unilateral changes in wages, hours and terms and conditions of employment. Respondent argues that because the charge did not specifically mention the hiring of temporary employees that no unfair labor practice can be found with regard to this issue.

Section 10(b) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge. Thus, the issue herein is whether the charge filed on March 15 is broad enough to encompass Respondent's hiring of temporary employees.

The United States Supreme Court in *Fant Milling Co.,* 360 U.S. 301, 307-08 (1959) held that a charge merely sets in motion the NLRB's inquiry; it need not be a specific as a judicial pleading. The General Counsel's complaint can therefore deal with any unfair labor practice

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never suggested that Respondent hire the agency temporary employees as permanent employees is at least as credible as Knox's testimony that she did so. Therefore, I decline to find that Knox made such a suggestion during this conversation.

Another factual dispute involves comments made by Richard Zeena at the December 5, 2003 bargaining session, Exh. R-1-S at p. 11. While I also believe a resolution is not critical to this decision, I will make a credibility finding in the event higher authority disagrees with me.

Zeena, a human resources manager for bonded abrasives employees responded to Union inquiries concerning two agency temporary employees, Francis Addai and Felix Brown, who had been working in the finishing process since May 20, 2003.

Zeena told Knox that, "they have been there for various reasons. Short-term disability, vacation. Because of the current volume level, we have kept them on."

Knox asked, "You don't think you need to post these positions?"

Zeena responded, "Some have been identified and we propose to post them. Some were posted on November 21st. Where we have jobs that were posted and not bid on, we will offer them to temporary employees."

Knox testified that she understood Zeena to mean that these jobs would be offered to temporary employees as permanent employees. Respondent argues that Zeena meant that the positions would be offered to temporary employees, "either as a temporary employee or as a permanent employee." Respondent's brief at page 98 n. 28.

Given the fact that "offers" were only made for temporaries to become permanent employees (Tr. 1836-37), Knox's understanding was clearly reasonable and a correct interpretation of what Zeena was telling her. Respondent did keep temporary employees working in jobs that were put up for bid and for which there were no bidders. However, Respondent did not "offer" these temporaries the opportunity to remain in the positions they already occupied. Francis Addai and Felix Brown remained as agency temporaries at least through August 2004. Addai was working as a temporary in the kilns as of November 2004.

related to those alleged in the charge and which grow out of the allegations in the charge while the proceeding is pending before the Board.

In *Redd-I, Inc.,* 290 NLRB 1115 (1988) and *Nickles Bakery of Indiana,* 296 NLRB 927 (1989) the Board held that a Complaint allegation satisfies the *Fant Milling* criteria if it involves the same legal theory as that contained in a pending timely charge, arises from the same factual circumstances or sequence of events as a timely charge and whether a respondent would raise similar defenses.

The charge filed on March 15, 2004 satisfies these criteria. It alleged that Respondent violated Section 8(a)(5) by failing and refusing to bargain collectively and implementing unilateral changes in wages, hours and terms of employment. These allegations are broad enough to encompass the allegation that Respondent violated Section 8(a)(5) by hiring numerous temporary employees to perform bargaining unit work—while negotiations for an initial contract were ongoing. They also encompass the Union's contention that Respondent had not bargained in good faith with it since October 2003. Respondent's defenses would be similar for any allegation of a unilateral change, i.e., no change occurred or if it did the Respondent bargained over the change and/or the Union waived its bargaining rights.

Moreover, the General Counsel's investigation of the charge would logically entail the allegation in the original charge that Respondent had failed and refused to bargain collectively by reneging on agreements. No later than April 28, 2004, Respondent was aware of the fact that the Union was contending that the hiring of numerous temporary employees was a violation of the October 2003 Voluntary Separation Agreement (VSA). Although the General Counsel apparently concluded that the influx of temporary employees did not violate the VSA, this allegation would logically entail an investigation into other theories as to why the hiring of many agency temporary employees may have violated Section 8(a)(5), *Office Depot,* 330 NLRB 640 (2000).

Respondent's hiring of numerous agency temporary employees to deal with an unexpected upturn in its business was a change from its past practices.

Respondent contends that its hiring of numerous temporary employees was not a unilateral change because it had done so before. However, a past practice must a regular long-standing practice, rather than a random or intermittent event in order for an employer to escape its bargaining obligations regarding a subject of mandatory bargaining, *Queen Mary Restaurants Corp. v. NLRB,* 560 NLRB 403, 408 (9th Cir. 1977); *Exxon Shipping Co.,* 291 NLRB 489, 493 (1988); *B & D Plastics,* 302 NLRB 245n. 2 (1991); *DMI Distribution of Delaware,* 334 NLRB 409, 411 (2001).

The fact that Respondent may have hired large numbers of temporary employees at one or more times during its 100 year plus history does not make this a regular long-standing practice. A past practice must occur with such regularity and frequency that employees could reasonably expect the "practice" to continue or reoccur on a regular and consistent basis, *Philadelphia Coca-Cola Bottling Co.,* 340 NLRB 349, 353-54 (2003); *Eugene Iovine, Inc.,* 328 NLRB 294, 297 (1999).

Regardless of whether or not Respondent had employed or hired temporary employees before and/or after the Union's certification, it was prohibited by Section 8(a)(5) from implementing any "material, substantial and significant" change from the status quo during collective bargaining negotiations, *Bath Iron Works,* 302 NLRB 898, 902(1991). The hiring of large numbers of agency temporary employees for periods of longer than 12 weeks

commencing in October or November 2003 to deal with an unexpected increase in orders was such a material, substantial and significant change. The fact that Respondent had a consistent practice of hiring a limited number of temporary employees usually for a relatively short period of time to cover for regular employees absent for vacation or FMLA leaves does not justify the wholesale reliance, without bargaining, on large numbers of temporary agency employees for an extended period of time to deal with an unexpected upsurge in business, *Register-Guard,* 301 NLRB 494, 496 (1991).

The record establishes that Respondent had an established past practice of hiring temporary employees for specific projects and hiring temporary agency employees for periods of up to 12 weeks to cover for employees who were on vacation or Family Medical Leave Act (FMLA) absences, e.g. R. Exh. 114 at page 15.[10] Respondent did not have any other established past practice with regard to the hiring of temporary employees and particularly with regard to the hiring of agency temporary employees.

I find, despite Respondent's assertions to the contrary, that the terms of the August 2002 tentative agreement and statements made by its counsel during negotiation of that agreement reflect its past practice. When presenting its proposal for a tentative agreement regarding temporary employees, Respondent's representative Thomas R. Smith told the Union that Respondent's intent was to conduct business as usual and that agency temporary employees were usually not hired for long periods of time, R. Exh. 111 at page 14-15.

In negotiations on July 31, 2002, Smith told the Union that Respondent was proposing a limit of 12 continuous weeks for agency temporary employees because Respondent used agency temporaries to cover FMLA leave, not just because Respondent wanted a higher number, R. Exh. 113, p. 15. On August 20, 2002, Smith and Al Cloutier, Respondent's Manufacturing Products Manager, again insisted that Respondent would agree only to a limit of 12 weeks to cover FMLA-related leaves and summer vacations.

In its reply brief, Respondent states that the General Counsel incorrectly states that the tentative agreement served to memorialize the Company's past practice. For one thing, it argues that the company's July 30, 2002 initial proposal of a one-year limit on Norton temporaries would make no sense, because such a limit was clearly not part of the St. Gobain's past practice. However, this proposal, if anything, gave Respondent greater latitude in employing temporary employees than its current practice. Its 1993 written policy on "Norton temporary employees" stated that temporary employees would generally not be hired for more than six months.[11] Thus, there is no indication anywhere in this record that Respondent ever proposed in negotiations over the tentative agreement anything that would diminish its latitude in using temporary employees when compared to its past practice.

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[10] I do not credit Mark Stacey's testimony to the extent that it suggests that Respondent had an established past practice of hiring temporary employees to deal with "spikes in business." Other than Stacey's assertion there is no evidence to support this practice and his assertion is inconsistent with Respondent's representations to the Union during negotiations over the tentative agreement on temporary employees in the summer of 2002.

[11] Respondent contends this document, Exh. G.C. - 3 applies to agency temporary employees, as well as "Norton temporaries." I conclude that by its express terms it only applies to Norton temporaries, who would, for example, be credited with seniority from their date of hire as a temporary.

Respondent argues further that the General Counsel and Union continually take statements out of context concerning proposals for the tentative agreement to bolster their assertions about the company's past practice. However, I conclude that a fair reading of the minutes of the August 20, 2002 bargaining session make it quite clear that the company representatives were talking about their current practices, rather than some different rules that would apply when and if a collective bargaining agreement went into effect.

In particular I rely on the following portions of the bargaining notes in reaching this conclusion:

> Carol Knox (CK): On temporary employees, in Section 5, dealing with agency temps. You proposed that they would be limited to 12 weeks.
>
> Thomas R. Smith (TRS): Yes, And we explained why. The FMLA provides for 12 weeks. We use agency temps to cover for FMLA leaves.
>
> CK: Our concern is situations like the one that is currently occurring in Plant 7. The company is using agency temps to fill permanent positions.
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> …
>
> TRS: We'll have to look into that.
>
> …
>
> CK: Can you look into that situation? When did they start, in July?
>
> …
>
> TRS: We'll get an answer for you…

R. Exh. 114 at page 8.

> TRS: What is the magic of six weeks?
>
> CK: It's a short period of time.
>
> TRS: But summer vacations could last two months. And that brings me to the issue that you raised. We use agency temps to fill in for vacations. In Plant 7, when the vacations are over, the agency temps will be gone. There may be one permanent position which will be posted and filled internally, if there are bidders…
>
> Bill Ernst (a Union bargaining committee member): Vacations are just about over in the Kiln. Those people are still there.
>
> TRS: I don't know the vacation schedule, but it is not designed to take the place of permanent positions. If they are still there in September, then I guess it would be a problem…

R. Exh. 114 at page 11.

> TRS: …On temporary employees, we went with your six months in Sections 1 and 4…In Section 5, we went with 12 weeks. We did this for a couple of reasons. It has to be simple. Many people don't know the difference between FMLA leave and other leaves, such as long-term disability. There are also people who exhaust their FMLA leave and then go on disability. Al, you mentioned something else about this?

> Al Cloutier (Respondent's Manufacturing Products Manager): Yes. We use agency temps to cover summer vacations. This year, we had more voluntary separations than we anticipated. And we needed the agency temps. Twelve weeks is the max. It allows us to keep them a little longer, but we need that to train them and get them up to speed.

R. Exh. 114 at page 15.

Respondent did not bargain over its resort to a massive and long-term use of agency temporary employees and the Union did not waive its bargaining rights.

As stated previously, Respondent did not bargain about its hiring of agency temporary employees to do bargaining unit work in late 2003 and 2004; it merely hired the agency temporaries and then told the Union after the fact. Since Respondent did not bargain, the Union could not have waived its statutory bargaining rights. *Bell Atlantic Corporation,* 336 NLRB 1076, 1087 (2001) and *Associated Milk Producers,* 561, 563 (2001), relied upon by Respondent, are cases in which the employer gave the Union advance notice of what it proposed to do with regard to a mandatory subject of bargaining.

In *American Diamond Tool,* 306 NLRB 570 (1992) the Board found that the employer violated Section 8(a)(5) by laying off three employees, without notice to the Union on January 2, 1990. However, the Board also found that the Union waived its bargaining rights with regard to those lay-offs occurring after January 18, 1990 when it submitted a contract proposal on that date which specifically provided that the employer would have the unilateral right to lay off employees by inverse seniority. Unlike the union in *American Diamond Tool,* the Charging Party in the instant case never indicated that it would not object to the further hiring of temporary employees to perform bargaining unit work. Indeed, the Union repeatedly argued that Respondent was reneging on the spirit, if not the letter of the Voluntary Separation Agreement, by replacing bargaining unit employees with agency temporaries, GC Exh. – 48; R. Exh. 1-GG at pp. 4, 6-7; R. Exh. 1-KK at p. 3; R. Exh. 1-OO at pp. 10-11; R. Exh. 1-TT at p. 2.

In conclusion I find that Respondent violated Section 8(a)(5) by implementing unilateral changes beginning in November 2003 in hiring large numbers of agency temporary employees for an indefinite period to deal with an unexpected upturn in its orders. Had it given advance notice to the Union of its intent to hire additional temporaries, the Union would have had the opportunity to bargain for alternative ways of addressing the "uptick." These alternatives for example, could have included the hiring of additional bargaining unit employees, converting the agency temporaries to permanent status after a specified time period and/or providing more opportunities for overtime.[12]

[12] Respondent contends that its employees were already working an excessive amount of overtime. However, Vice President Steve Stockman made that determination on his own by talking to employees and managers. Such a determination should have been made only in conjunction with the authorized collective bargaining representative of Respondent's employees. Moreover, Respondent's assertion that employees did not want or could not handle more than a 20% increase in their regular hours (8 hours for a 40-hour week) has not been established.

A Second Election should not be ordered nor should Respondent be required to continue to recognize and bargain with the Union on the basis of unfair labor practices committed prior to December 22, 2004, when the Union decided to go forward to an election.

The Charging Party contends that black letter Board law mandates that the results of the January 2005 decertification be invalidated, that a second election be ordered and that Respondent be ordered to bargain with it.

Traditional Board law generally would necessitate an order requiring Respondent to bargain with the Union and another election based upon a finding that Respondent violated Section 8(a)(5) by hiring numerous temporary employees during the critical period between the filing of the Gregoire petition in early 2003 and the January decertification election, *Caterair International,* 322 NLRB 64 (1996); *Kentucky Fried Chicken Caribbean Holdings,* 341 NLRB No. 13 (2004.

A violation of Section 8(a)(1) during the critical period will necessitate setting aside the election unless it is "virtually impossible" to conclude that the employer's conduct affected the outcome, *Bon Appetite Management Co.* 334 NLRB 1042, 1043 (2001). An employer who violates Section 8(a)(5) derivatively violates Section 8(a)(1), *ABF Freight System,* 325 NLRB 546 n. 3 (1998). Given the number of violations (each time Respondent hired additional agency temporaries), their severity, its obviousness to members of the bargaining unit and the Union's margin of defeat, one cannot conclude that it was virtually impossible that Saint Gobain's unfair labor practices affected the outcome of the January decertification election.

However, I conclude the in the instant case, the traditional rule should not apply. Gregoire's petition was blocked for almost two years by pending unfair labor practice charges. In December 2004, the Union decided to go forward to an election. All parties to this election understood it to be a test of the Union's majority support, e.g. R. Exh. 3-T. The decertification election would be meaningless if the Union can negate its results on the basis of unfair labor practices of which it was aware when it informed the Board to schedule the decertification election.

The Charging Party, relying on *Great Atlantic & Pacific Tea Company,* 101 NLRB 1118 (1952), argues that it did not waive its right to challenge the results of the election on the basis of unfair labor practices predating its notification to the Regional Director that it desired to go forward to an election. In *Great Atlantic*, after the execution of a stipulation for certification upon consent election, but before the election, the employer sent unit employees a letter informing them that they would not be receiving a wage increase due to the pendency of the election. The union, which became aware of the letter almost immediately, did not file charges or otherwise protest this letter to Board in the several weeks remaining before the election. After it lost the election, the union filed objections based on the letter.

The Board held that the union was not estopped by its prior knowledge of the objectionable conduct and that it could rely on that conduct in challenging the election. It decided that any substantial interference with employee free choice occurring in the critical period before the election may be a basis for setting the election aside. The principle in *Great Atlantic* has been followed by the Board in a number of cases, such as *Lloyd A. Fry Roofing Co.,* 142 NLRB 673, 680-81 (1963) and *The Deutsch Co.,* 178 NLRB 616. 617 (1969). In *Ideal Electric,* 134 NLRB 1275 (1961), the Board held that any substantial interference occurring between the filing of the representation petition and the election may be a basis for setting the election aside. The decision was predicated on an assumption that the time period between the filing of the petition and the election would be relatively brief.

The Board applied the *Great Atlantic* principal in the decertification context in *Virginia Concrete Corp.,* 338 NLRB 1182 (2003). In that case the employer argued that the union waived its right to object to pre-election conduct because it had withdrawn its unfair labor practice charge predicated on the same conduct (a pre-election wage increase). The Board rejected this argument on the basis of *Great Atlantic.* However, the Board went on to overrule all the union's objections and certified the results of an election that the Union had lost.

In no case has the Board ever held that an incumbent union can proceed to an election despite pending charges and then obtain a bargaining order if it loses the decertification election. Moreover, the Board's rationale for its decision in *Great Atlantic* has, at best, questionable applicability to a petition to decertify an incumbent union.

The Board stated:

> Under present Board practice, any party, may by engaging in conduct which interferes with an election, and by its timing of that conduct, substantially control the course of the Board's election processes. In the event of such interference, the other parties and the employees are confronted with the choice of either (a) requesting a postponement of the election, with the substantial delay that involves in ascertaining the employees' desires until the effects of the interference has dissipated, or (b) accepting the equally difficult choice of proceeding to an election in the face of such interference knowing that a second election cannot be held for at least another six months, should the interference have its intended effect and the election therefore not reflect the employees' true desires.

101 NLRB 118, at 1120.

In the case of a union seeking initial certification, this rule makes sense it that it prohibits the employer from controlling the Board's election process. Without the *Great Atlantic* rule, the employer could effectively deny and/or delay employees their right to union representation by coercing and interfering with employees' free choice. However, an incumbent union can prevent an employer from forcing an election on coerced employees by blocking a decertification election until unfair labor practices are remedied. During the time that the blocking charges are in effect, employees represented by an incumbent union, unlike those seeking representation for the first time, are not deprived of their right to union representation by the employer's unfair labor practices.

The Board has recognized, albeit in other contexts, that there is a difference between the rules to be applied to an initial representation election and those applied to a decertification election. In *Butera Finer Foods,* 334 NLRB 43 (2001), the Board set aside the results of a decertification election won by the union. It did so because a union business agent served as the union's election observer and indicated that this would not be objectionable if the union was not an incumbent.

However, in another case, *W.A. Kreuger Co.,* 299 NLRB 914, 915-17 (1990), the Board has made this distinction in favor of the incumbent union. The Board held that the principal enunciated in *Mike O'Conner Chevrolet-Buick-GMC,* did not apply to the situation in an incumbent union is challenging the results of a decertification election. Rather than merely acting at its peril while the union's objections are pending, an employer violates Section 8(a)(5) if it makes unilateral changes while an incumbent union's objections are pending. In this regard, I would note that Respondent may have violated Section 8(a) (5) and (1) after the election by

hiring one agency temporary employee on February 8, 2005, five on February 14 and one on March 1, GC Exhs. 54 and 55.

The Board noted that when dealing with a union seeking representation, the status quo while objections are pending, is for an employer to act unilaterally. However, an incumbent union is entitled to be treated as the employees' bargaining representative until a final determination is made that the union is no longer the employees' representative.

Although the January 2005 election may not reflect an uncoerced majority of the ballots, to invalidate the instant election on the basis of unfair labor practices of which the Union was aware prior to its decision to go forward to an election would render that election a sham.[13] As stated previously, all parties to this election understood that the Union chose to put its majority support to the test despite the presence of pending unfair labor practice charges. Since Board precedent does not require that I consider the election a nullity, I decline to do so.

However, I recommend that the Board remedy Respondent's unfair labor practice in line with the remedy suggested by the Union at pages 70-74 of its brief. That is to say that I recommend that, with certain exceptions, every temporary employee hired by Respondent on or after October 20, 2003, who remains at the Worcester facility be converted to regular permanent status retroactive to their date of hire as a temporary and receive all wages and benefits of a regular permanent employee retroactive that date. Any employee hired as a temporary on or after October 20, 2003, who has since left the Worcester facility shall be made whole in a similar manner. Excluded from this remedy are employees hired, for reasons consistent with Respondent's established past practice, i.e., solely for periods of up to 12 weeks to cover for employees who were on vacation or Family Medical Leave Act (FMLA) absences.

Objection 11: The Employer threatened employees with retaliation if they supported the Union in the election.

This allegation concerns Kevin Goodrich, who until June 2004 was a group leader on the second shift in plant 8. Goodrich's wage rate in this position was $17.73 per hour. Wanting to spend more time with his family, Goodrich accepted a day shift job in the molding department, for which the pay rate was $14.38 per hour. Both of these jobs were bargaining unit positions. Goodrich was openly opposed to the Union. Plant 8 manager Al Balding agreed, without notifying the Union, to continue paying Goodrich $17.73 per hour through the end of 2004. Part of the agreement between Balding and Goodrich was that Goodrich was to help train his replacement as group leader. However, his replacement, Richard Killoran, did not need such training and Goodrich only worked with Killoran for several hours on a single day (Tr. 406, 425).

On or about September 15, 2004, Goodrich discovered that Respondent had cut his pay to $14.38. He put on a pro-Union T-shirt and wore it to work. His supervisor, Jeff Clark, approached Goodrich at his work station. Clark told Goodrich that he would never be a group leader again and that management sees red when they see a Union shirt. Clark also mentioned

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[13] I find no need to tamper with Board law on the "critical period," as set forth *Ideal Electric*. This is particularly true since the large number of agency temporary employees performing bargaining unit work as of the date of the decertification election, indicating that Respondent felt free to bypass the Union at its convenience, may well have convinced a significant number of employees that it was futile to continue their support for the Union, see *Harborside Healthcare, Inc.,* 343 NLRB No. 100 (2004), slip opinion at pg. 7 and n. 21.

a pro-Union employee named Harry. Clark told Goodrich that Harry would never be a group leader again.[14]

The next day, Goodrich went to the office of Thomas Oliver, Respondent's General Superintendent in plant 8. Oliver is and was Jeff Clark's supervisor. Goodrich told Oliver that he had worn a union T-shirt to work the day before and that Clark had told him that wearing it would not look good in the eyes of management.

Oliver went to talk to Jeff Clark. Clark confirmed that he had told Goodrich that wearing a union shirt wouldn't look good to management. He told Oliver that he was comfortable talking to Goodrich. Oliver understood Clark to mean that he could tell Goodrich how management felt about the Union without having to worry about it getting back to the Union. Oliver testified that he told Clark that his conduct was unprofessional and should never happen again.

I sustain the Union's objection 11 and also conclude that Respondent, by Jeff Clark, violated Section 8(a)(1) of the Act in interfering with, restraining and coercing Goodrich in the exercise of his Section 7 rights.[15] However, I conclude that given the fact that there is no evidence that anyone other than Kevin Goodrich was aware of Clark's conduct, I conclude that it is virtually impossible to conclude that this conduct affected the outcome of the decertification election. Moreover, it predated the Union's request to proceed with an election.

Objection 12: The Employer allegedly discriminated against Union supporters by restricting their right to campaign and distribute literature.

Respondent's written policy prohibits the distribution of literature to an employee by another employee in work areas at all times and in non-work areas, which include break areas and the cafeteria, when either employee is on working time, R. Exh. 23, Tr. 401-02. This policy was communicated to bargaining unit employees at toolbox meetings. Robert Doolittle, a pro-Union employee in plant 7, observed anti-union employee Thomas Coonan distribute GCATU literature before the normal breaktime in plant 7. Doolittle complained about this to his supervisor, Alan Johnson. Nevertheless, Doolittle observed Coonan distributing GCATU literature before the break period on three occasions after he had talked to Johnson. Pro-Union employee James Thompson observed Coonan placing GCATU literature by the coffee pot break areas on a daily basis over the three weeks prior to the decertification election, prior to the normal break times for employees in plant 7.

Coonan, a manufacturing engineering technician, was allowed to vary his break times from the regular 9:00-9:15 a.m. and 12-12:30 p.m. scheduled breaks due to the nature of his duties. He concedes that he distributed GCATU flyers while taking his break outside of the regularly scheduled break times. I credit his testimony that he placed the GCATU literature only

[14] I credit Goodrich's account of his conversation with Clark. Respondent did not call Clark as a witness to rebut Goodrich's testimony. Instead, it called Thomas Oliver, the General Supervisor for Plant 8, who is Clark's boss. Oliver testified that Goodrich only told him that Clark had said to Goodrich that wearing a union T-shirt wouldn't look good to management. Goodrich testified that he related only part of his conversation with Clark to Oliver. I deem Goodrich's account to be uncontradicted and draw an adverse inference from Respondent's failure to call Clark as a witness. I infer that he didn't testify because he would have had to corroborate Goodrich's testimony.

[15] Although, this incident was not alleged as a violation by the General Counsel, it was fully and fairly litigated.

on coffee tables used for breaks. Nevertheless, this appears to violate Respondent's policy regarding the distribution of literature. Respondent, by Alan Johnson, was aware that Coonan was distributing anti-union literature while other employees were working and apparently did nothing to stop him. By virtue of the latitude accorded to him, Coonan was able to have the GCATU literature available to other employees as soon as their break started, Tr. 436.

On one occasion in January 2005, Union supporter Edward McCarthy arrived at the cafeteria in the Superabrasives Building at the beginning of the lunch break. GCATU members Wayne Gregoire, Mark Tatro and Supervisor Peter Wojner were standing together. GCATU literature had been put out near the area in which hot food was served prior to McCarthy's arrival.[16] This also appears to have been a violation of Respondent's policy regarding the distribution of literature.

Finally, several Grassroots Committee members regularly dropped off GCATU literature to Committee member Bruce Kennan in his work area in plant 4, so that Kennan could distribute this literature to other employees, Tr. 569-73. Respondent's written policy prohibits the distribution of literature in work areas at all times.

Also in January 2005, Union bargaining committee member Anthony Quitadamo went to plant 4 to drop off Union literature to another Union supporter, Thomas Sicord. Quitadamo was not on work time. He left the union literature on Sicord's desk, which is a work area.

Human Resources Manager Richard Zeena met Quitadamo soon afterwards and told him not to distribute union literature on company time. Quitadamo told Zeena he was not distributing union literature, but merely dropping it off to another union supporter for later distribution. Quitadamo was not disciplined, nor was he told he could not drop union literature off in work areas at any time.

I overrule Objection 12. Although, Respondent did not enforce its literature distribution rule against anti-Union GCATU employees, there is no evidence that it enforced it against pro-union employees. For example, the record indicates that there were pro-union employees in the same classification as Coonan and there is no evidence indicating that they were prevented from distributing pro-Union literature at times when they varied their break schedule.

Objection 13: Respondent promised employees that they would enjoy better wages and benefits if they voted against continued representation by the Union.

This objection is predicated on campaign material mailed to every bargaining unit members' home on or about January 14, 2005, approximately two weeks prior to the decertification election and distributed to unit members by supervisors at about the same time, R. Exh. 2-D. A letter signed by Stephen Stockman, Saint Gobain's Vice President for Bonded Abrasives in North America and Site Manager for the Greendale facility, and an attachment, listed twenty-four tentative agreements which St. Gobain contended would provide employees less of a benefit than they were receiving as of January 2005.

Also, on or about January 14, 2005, Respondent instructed its supervisors in writing how to respond to inquiries as to what would happen if the Union lost the decertification election. Management instructed supervisors to tell employees that "in collective bargaining, you could

[16] Gregoire testified that he did not recall such an incident occurring but did not actually contradict McCarthy's testimony, Tr. 343, 351-352. I credit McCarthy's testimony on this matter.

end up with more, the same, or less. If the union is voted out, you won't bear the risks of the collective bargaining process. But I can say this: as a result of the election, no employee's wages or benefits will be reduced…," Union exhibit 21, Tr. 318-21.

The Union contends that these communications were misleading at best. It points out that the company's final contract offer, which was still on the table in January 2005, would effectively result in a decrease in Saint Gobain's contribution to employees' 401(k) plans.

Thus, the Union argues that the company flyer and instructions to supervisors falsely imply that if the Union is voted out, employees will enjoy better benefits than if employees voted to retain the Union. This follows from the fact that Saint Gobain's final contract offer included a decrease in the employer contribution to the 401(k) plans and the January 12, 2005 flyer and supervisor's instructions implicitly promises that no benefits will be reduced.

I overrule objection 14 on several grounds. First of all, there is no evidence as to the extent to which supervisors communicated Respondent's message to bargaining unit employees. Secondly, the Union had an adequate opportunity to respond to Stockman's January 14 letter and did so by disseminating a letter from Robert Aldrich, a bargaining unit employee and former supervisor. R. Exh. 3-X, Tr. 522-524. As a general proposition, both sides had an opportunity to present their point of view in the weeks prior to the decertification election and did so. This being the case, even if the Stockman letter and the instructions to supervisors were objectionable, it is virtually impossible to conclude that they impacted the result of the election.

Objections 15 and 16

The Union alleges that Respondent, by its officers, agents and representatives, including the National Right to Work Legal Defense Foundation and the Grassroots Coalition Against the Union (GCATU), threatened to close the Saint Gobain's Worcester plant if employees voted in favor of the Union in January 2005. It also alleges that the National Right to Work Legal Defense Foundation created an atmosphere of fear and intimidation by repeatedly threatening, through the Grassroots Coalition Against the Union, that the plant would close if employees voted in favor of the Union. In so alleging, the Union is not arguing that the election should be invalidated solely on the basis on comments attributed to Saint Gobain's senior labor relations advisor, Dennis Baker, by the *Worcester World Telegram* in June 2004.

GCATU was formed by a number of employees, all or most who opposed the Union during the 2001 organizing drive. Two of the leaders of the GCATU filed the decertification petitions in the instant case. Wayne Gregoire is a group leader in the machine shop in the Superabrasives department.[17] This is a bargaining unit position and Gregoire voted in the 2001 and 2005 elections without challenge. He is apparently the first member of the GCATU to contact the National Right to Work Legal Defense Foundation. He has obtained literature and advice from the Foundation in his effort to decertify the Union.

Engineering Technician James Mitchell, the GCATU member who filed the September 2004 decertification petition, has written all of the original articles posted on the GCATU website. In an article dated July 29, 2004, Mitchell referred, very generally, to an article by columnist Robert Nemeth, which appeared in the July 25, 2004 edition of the *Worcester World*

[17] Gregoire is the only group leader active in the GCATU.

Telegram. Mitchell described the Nemeth article as objective and unbiased. He did not mention the substance of the article.[18]

All GCATU material disseminated in January 2005, just prior to the decertification election, closed with the tagline "Save Our Jobs-Vote No!" This material cited other UAW organized facilities that had closed and strongly suggested that if the employees at Saint-Gobain did not vote to decertify the UAW, that Respondent would close the Worcester facility.

Analysis and Conclusions regarding Objections 15 and 16

Agency

The Union contends in objection 15 that the GCATU and the National Right to Work Legal Defense Foundation acted as Saint-Gobain's agents in threatening employees with plant closure if they did not vote for decertification. The Union bears the burden of proving an agency relationship with regard to these alleged threats. It may do so by establishing that Saint-Gobain gave the GCATU and/or the National Right to Work Legal Defense Foundation either actual authority or apparent authority to act on its behalf, *Cornell Forge Co.,* 339 NLRB 733 (2003).

There is no evidence that Saint-Gobain solicited or authorized the GCATU's recurring communications to employees that voting for decertification was essential to saving their jobs.[19] To demonstrate that the GCATU had apparent authority to act for Saint-Gobain, the Union must establish that under all the circumstances employees would reasonably believe that the GCATU and/or some of its individual members were reflecting company policy and speaking and acting

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[18] In pertinent part Nemeth's article stated:

> Ever since the United Auto Workers won a narrow victory to represent 800 workers at Saint-Gobain abrasives operation in Greendale, tension has been mounting between management, the union, the political establishment and segments of the community.
> There has been talk about Saint-Gobain closing shop and leaving Worcester altogether. "No decision has been made yet (about future plans) but if things keep going wrong, sooner or later the company's patience will run out," said Dennis Baker, senior advisor, during a series of interviews with company officials, city and political leaders. While the Worcester operation still produces profit, "it is the highest-cost facility for Saint-Gobain anywhere in the world," Mr. Baker revealed…"

Nemeth's article went on to discuss Saint-Gobain's disenchantment with coverage of its labor problems by local news media and the involvement of numerous state and local politicians, including Senators Kerry and Kennedy, Representative James McGovern and Worcester Mayor Timothy Murray, on behalf of the UAW. The CGATU did not mention the quotations or the substance of the quotations attributed by Nemeth to Dennis Baker in any of its literature of website postings. The Union filed an unfair labor practice charge alleging that Respondent in Nemeth's *World Telegram column* violated Section 8(a)(1) by threatening to close the Worcester facility. The General Counsel did not file a complaint based on this charge.

[19] *Ohmite Manufacturing Co.,* 290 NLRB 1036 (1988) , relied upon by the Union, was a case in which, in contrast to the situation herein, two bargaining unit employees were found to be agents of the employer in part because they were authorized to answer employee inquiries on behalf of management.

for management, *Community Cash Stores,* 238 NLRB 265 (1978). It is not enough for the Union to show that Saint-Gobain and the GCATU had the same objective, i.e., decertifying the Union, and/or that the GCATU and/or its members viewed their interests to be identical to those of management. Section 7 of the Act protects the right of employees to oppose the Union and the rights of those members of the GCATU whose oppose unions as a general proposition. The Act also protects the rights of such employees to communicate their views to others.

Apparent authority can be established by indirect evidence and a finder of fact can infer apparent authority from the record as a whole. However, this record falls short of justifying such an inference. In January 2005, on one occasion, Union supporter Edward McCarthy observed two members of the GCATU standing with Supervisor Peter Wojner at the beginning of a lunch break. GCATU literature had already been put out in the hot food area. The record is insufficient to establish that Wojner authorized the GCATU to put out its literature prior to the lunch break or that he knew that members of the GCATU had done so.

The record also establishes that Saint-Gobain management allowed those GCATU members who had flexible break schedules to distribute GCATU literature at times outside of the normal break times. However, the Union has not established that Saint Gobain forbid pro-Union employees with flexible break schedules to also distribute their literature outside of normal break times. In view of this lack of evidence indicating a discriminatory policy favoring the GCATU, I overrule the Union's objection that the GCATU and National Right to Work Legal Defense Foundation acted as the Employer's agent in threatening employees with plant closure.

Creation of an Atmosphere of Fear

There is no question but that a central part of the GCATU's campaign against the UAW was to persuade employees that a vote for decertification was essential to the survival of their jobs and even the survival of the Worcester facility. However, the standard for finding conduct by a third party, who is not an agent of a party, sufficiently objectionable to invalidate an election is different from the standard applied to the parties to the election, *Lamar Advertising of Janesville,* 340 NLRB No. 114 (2003). The Board evaluates: (1) the nature and/or seriousness of the threat; (2) whether it encompassed the entire bargaining unit; (3) whether the threat was widely disseminated within the bargaining unit; (4) whether the person or persons making the threat were capable of carrying it out and whether it is likely that the employees acted or voted in fear that this person or persons were capable of carrying out the threat; and (5) whether it was made or repeated at or near the time of the election, *Westwood Horizons Hotel,* 270 NLRB 802, 803 (1984).

The GCATU "threats" were obviously very serious, effected the entire bargaining unit, were widely disseminated and repeated throughout the weeks just prior to the decertification election. However, in the context of a threat or prediction of plant closure, a third-party would have to be an agent of the employer in order for employees to have acted or voted in fear that employees, such as the GCATU members, could effectuate or influence plant closure or even a loss of jobs at the employer's facility. There is nothing in the record that would indicate that employees reasonably would have believed that the GCATU or the National Right to Work Legal Defense Foundation would have influence in any decision on the part of Saint-Gobain with regard to employment at Worcester. Indeed, whether Saint Gobain decides to preserve or abandon the Worcester facility and/or maintain or reduce the level of employment at the facility may depend on many factors unrelated to the outcome of a decertification election, such as the demand for its abrasive wheels and the relative non-labor costs associated with producing its wheels elsewhere.

Complaint paragraphs 9 and 10/ Objections 5 & 6: direct dealing with employee James Bailey; unilateral reconfiguration of his job.

James Bailey, a bargaining unit employee, worked as a work distributor in plant 8 in 2002. His supervisor, Charles Heffelfinger, moved Bailey to a position preparing glass cloth for the press operators and other production functions. The glass cloth goes inside the abrasive wheel to increase its stability. Bailey moved to the glass cloth attendant position to fill in for employee Leonard Baird, who was going on disability. Baird's wage rate was a band 4 pay band, a higher band than Bailey's pay band 2.

Bailey performed the glass cloth job for approximately a year and a half. In October 2003, Richard Bouchard, who was then his supervisor, told Bailey that he would be sent back to his job as a work distributor and that the glass cloth position would be posted for bid.[20] In December 2003, Bailey bid on a position as a molding machine operator, pay band 3, in plant 7. He was awarded that position and continues to hold that job as of this hearing.

In January 2004, Respondent posted a bidding opportunity for a Materials Management Specialist. Bailey bid on this position. Douglas Hannam, an employee with greater seniority than Bailey, who was returning to work from disability leave, was awarded this position at an office worker's pay band, BD, which has a higher salary range than James Bailey's factory worker's band 3. The tasks set forth in the job description for the position awarded to Hannam are essentially the same tasks performed by Bailey when he performed the tasks of a glass cloth attendant.

In essence, Respondent gave Bailey's job a new name, changed the pay band and put the position up for bid during its negotiations for an initial contract. If it did so without notifying the Union, giving it an opportunity to bargain and gaining its consent, Respondent violated Section 8(a)(5), *U.S. Ecology Corp.,* 331 NLRB 223, 227-28 (2000); *Bottom Line Enterprises, supra.* The issue with regard to Bailey is whether Respondent, in fact, fulfilled its bargaining obligations.

Bailey and the glass cloth position were on Respondent's tentative list of jobs slated for elimination. They were discussed at the December 5, 2003 bargaining session, R. Exh. 1-S, pp. 9-10. I conclude that the Union agreed to the transfer of Bailey's tasks to other bargaining unit employees and his return to his former position as a work distributor. Rick Zeena did not accurately describe what was to happen to Bailey's job functions in glass cloth, but he clearly advised the Union that they would transferred to other bargaining unit employees. He also told the Union that Bailey would be returned to his previous job. Carol Knox's response was, "Okay." Thus, I find that the Union waived its bargaining rights on these matters.

However, Respondent violated the Act in dealing directly with James Bailey. One to two months prior to telling the Union about its plans for Bailey and the glass cloth position, and prior to getting its consent, Bouchard told Bailey about these plans. Nevertheless, I find that it is virtually impossible, given the isolated nature of the misconduct, the size of the bargaining unit and Union's margin of defeat, to conclude that this violation/objectionable conduct could have affected the outcome of the January 2005 decertification election, *Bon Appetit Management Co,*

[20] Respondent, in its brief, attacks Bailey's credibility regarding his conversation with Bouchard. However, it failed to call Bouchard to contradict Bailey. I therefore credit his testimony in this regard.

supra. Moreover, the objectionable conduct occurred prior to the Union's request to proceed with the decertification election.

Complaint Paragraph 11/Objections 5 & 6: Alleged unilateral abolition of the maintenance electrician position

James Cronin, a bargaining unit employee, worked as a maintenance electrician in the electrical department of bonded abrasives on twelve hour shifts—four nights on (7p.m.-7 a.m.); four nights off. Cronin's job was to keep machinery and the ovens (kilns) operational from an electrical standpoint. In the fall of 2003, Cronin's position was tentatively slated for elimination pursuant to the Voluntary Separation Agreement. At the bargaining sessions of December 5, and 9, 2003, the Union objected to the elimination of Cronin's position, R. Exh. 1-S, p. 12; R. Exh. 1-T, pp. 8, 10 and 18.

Cronin bid on other bargaining unit jobs, but was not awarded one. Subsequently, Ron Otterson, a General Superintendent, offered Cronin a job in the mixing phase of the production line; Cronin accepted the offer.

On, or just prior, to January 1, 2004, Cronin noticed a job posting for a night shift electrical assignment, 4 nights on, 4 nights off, in his department (GC Exh. 62). Respondent did not notify the Union or offer it an opportunity to bargain with regard to the posting of this position. Cronin submitted a bid for what he considered to be his own job. The job was awarded to Jonathan Fellows, an electronic electrician, who had considerably less seniority at Saint Gobain than Cronin. Cronin considers the mixing job to be less desirable in that it is dirtier and has a lower pay band (salary range).

Steve Stockman, Saint Gobain's Vice-President for Bonded Abrasives, and Norman LaLiberte, Manager of Maintenance and Facility Services, made the decision to eliminate Cronin's position.[21] They decided to reduce the number of employees in the bonded abrasives electrical department from twelve to eleven and have one of the eleven cover Cronin's tasks. Cronin's skill level was differentiated from that of the other employees in the department by his lack of familiarity with computers and computer controlled equipment. His position was put up for a bid, which was limited to the eleven employees still in the department. Nobody bid on the job except for Cronin. The position was "awarded" involuntarily to Jonathan Fellows, the least senior electronic electrician. Fellows, who had been working a day shift generally Monday-Friday, then began working the night shift, 4 nights on; 4 nights off.

Unlike Bailey's situation, the Union never agreed or waived its bargaining rights with regard to Cronin and his position. Thus, I find that Respondent violated Section 8(a)(5) in making these unilateral changes, *U.S. Ecology Corp., supra*; *Bottom Line Enterprises, supra.* Respondent, by Ron Otterson, also violated the Act in dealing directly with Cronin regarding the mixing job. Given the fact that this conduct only impacted Cronin and there is no evidence that anyone other than Cronin and a few bargaining committee members knew about Respondent's conduct, the size of the bargaining unit and the margin of the Union's defeat, it is virtually impossible to conclude that this conduct could have affected the outcome of the January 2005 election. Additionally, as with the violations involving Bailey and Goodrich, Respondent's violative/objectionable conduct regarding Cronin occurred long before the Union informed the

[21] Cronin's job appears on the December 1, 2003 list of positions to be eliminated (Ex. G.C. – 35).

Regional Director that it wished to go forward with an election. Thus, it cannot be a basis for invalidating the results of that election.

Complaint Paragraph 15: Respondent's failure to adhere to the terms of the Voluntary Separation Agreement by hiring agency temporary employees to fill positions that Respondent proposed to eliminate.

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) by failing to adhere to the terms of the Voluntary Separation Agreement by hiring three agency temporary employees to fill jobs Saint Gobain proposed to eliminate on July 23, 2004. Respondent concedes the facts alleged to have violated the Act, but contends these temporary employees were hired due to an inadvertent mistake by General Supervisor Thomas Oliver. The list of positions proposed for elimination that Respondent gave to the Union on July 23, 2004, includes two rescreener positions (#22 and #33 on the list) on the third shift. Both these jobs were located in plant 8, in which there are separate production lines for large and small (or core) grinding wheels. These rescreeners' function is to supply the molders with mix.

The regular/permanent full-time employee who held position #22, which is located on the small or core wheel production line, accepted another job. Plant 8 General Supervisor Thomas Oliver hired an agency temporary, Nicholas Crestuk, to take his place. In July 2004, Oliver moved Crestuk to a press operator's position and hired agency temporary Eric Baning to fill the third shift small wheel rescreener position. Crestuk's employment as an agency temporary employee at Saint Gobain ended in November, 2004. In December 2004, Respondent converted Baning to regular or permanent full-time status.

Respondent terminated the agency temporary employee holding position # 33, a third shift rescreener in the large wheel production line, in accordance with the Voluntary Separation Agreement. However, in July 2004, Oliver hired another agency temporary, Kofi Osei, to fill that position. Respondent hired Osei as a regular/permanent full-time employee in February 2005.

Respondent, by Oliver violated the Act in filling the two eliminated positions with agency temporary employees.[22] Oliver is an agent of Saint Gobain and his error is imputed to Respondent. It is fairly obvious that if the terms of the voluntary separation agreement had been adequately communicated to Oliver, that this violation would not have occurred.

Since these violations of the VSA predate December 22, 2004, they also are not appropriate grounds for invalidating the results of the election.

Summary of Conclusions of Law

1. Starting on or about October 20, 2003, Respondent violated Section 8(a)(5) and (1) by unilaterally hiring numbers of agency temporary employees in numbers, for durations and for purposes that were a departure from its established past practices.

2. Respondent, by Jeff Clark, violated Section 8(a)(1) of the Act in threatening Kevin Goodrich for with adverse treatment due to his support for the Union. This violation also constitutes objectionable conduct during the critical period. However, given the fact that there is

[22] As the General Counsel notes in its reply brief, Respondent's violation is a "contract modification" as opposed to a unilateral change, *Bath Iron Works,* 345 NLRB No. 33, slip op. at 4 (2005)

no evidence that anyone other than Kevin Goodrich was aware of Clark's conduct, it is virtually impossible to conclude that this conduct affected the outcome of the decertification election.

3. Respondent, by Richard Bouchard, violated Section 8(a)(5) in dealing directly with James Bailey, instead of through the Union.

4. Respondent violated Section 8(a)(5) by unilaterally eliminating a maintenance electrician position and dealing directly with James Cronin.

5. Respondent violated Section 8(a)(5) by hiring agency temporary employees to fill two rescreener positions that had been eliminated by virtue of the Voluntary Separation Agreement.

6. It is virtually impossible to conclude that the violations/objectionable conduct regarding James Bailey, James Cronin or the two rescreener positions could have affected the outcome of the January 2005 decertification election.

7. No violative/objectionable conduct occurring prior to December 22, 2004, when the Union notified the Regional Director of its desire to go forward to a decertification election can be considered as a basis for invalidating the results of that election and requiring Respondent to continue recognizing and bargaining with the Union.

CERTIFICATION OF THE RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for the Union and that it is no longer the exclusive representative of bargaining unit employees.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Saint Gobain Abrasives, Inc., Worcester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) At a time when the International Union of Automobile Aerospace and Agricultural Workers of America (UAW) is the exclusive collective bargaining representative of the employees in an appropriate unit, transferring bargaining unit work to agency temporary

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

employees, or any other non bargaining unit employees without giving the Union notice and an opportunity to bargain; and/or making any such transfer during negotiations for a collective bargaining agreement without the consent of the Union; dealing directly with bargaining unit employees with respect to their wages, hours, or other terms and conditions of employment; unilaterally abolishing bargaining unit positions without giving the Union notice and an opportunity to bargain, or from doing so without the consent of the Union while collective bargaining negotiations are ongoing.[24]

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Convert any agency temporary employee hired in the abrasives division on or after October 20, 2003 to regular permanent status retroactive to their date of hire, except for those agency temporary employees whose sole function was to replace employees on vacation or FMLA leave for a period of less than 12 weeks.

(b) Compensate, with interest, any agency temporary employee hired in the abrasives division on or after October 20, 2003 for wages and benefits, they would have earned as a regular permanent employee since their date of hire—except those employees whole sole function was to replace employees on vacation or FMLA leave for less than 12 weeks.

(c) Offer James Cronin reinstatement to his maintenance electrician position.

(d) Make James Cronin whole for any loss he may have incurred, with interest, as a result of the unlawful elimination of his maintenance electrician position.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Worcester, Massachusetts, copies of the attached notice marked "Appendix."[25] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent

[24] See *Northland Hub Co.,* 304 NLRB 665 (1991).

[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

at any time since October 20, 2003.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(h) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., March 24, 2006.

_____
Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT at a time when the International Union of Automobile, Aerospace & Agricultural Workers of America (UAW), Region 9A, AFL-CIO is the exclusive bargaining representative of employees in an appropriate unit, engage in direct dealing with you, unilaterally change your wages, hours and any terms and conditions of your employment without notifying the Union and affording an opportunity to collectively bargain with us.

WE WILL NOT at a time when the International Union of Automobile, Aerospace & Agricultural Workers of America (UAW), Region 9A, AFL-CIO is the exclusive bargaining representative of employees in an appropriate unit, make any unilateral changes to your wages, hours and terms and conditions of employment during collective bargaining negotiations without the consent of the Union.

WE WILL NOT threaten you with any adverse consequences for supporting the UAW or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act

WE WILL, within 14 days from the date of this Order, offer James Cronin full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make James Cronin whole for any loss of earnings and other benefits resulting from our unilateral elimination of his maintenance electrician position, less any net interim earnings, plus interest.

WE WILL make every agency temporary employee hired on or after October 20, 2003 into the UAW bargaining unit in the abrasives division, who is still employed at the Saint Gobain Worcester, Massachusetts facility, a regular permanent employee retroactive to their date of hire as a temporary employee. This does not apply to any employee hired for less than 12 weeks solely to fill in for regular employees on vacation or FMLA leave.

JD-23-06
Worcester, MASS

WE WILL compensate every agency temporary employee hired on or after October 20, 2003 into the UAW bargaining unit in the abrasives division for the differential between their earnings and other benefits received as a temporary employee and that of a regular permanent employee plus interest—retroactive to their date of hire. This does not apply to any employee hired for less than 12 weeks solely to fill in for regular employees on vacation or FMLA leave.

SAINT GOBAIN ABRASIVES, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

10 Causeway Street, Boston Federal Building, 6th Floor, Room 601

Boston, Massachusetts 02222–1072

Hours of Operation: 8:30 a.m. to 5 p.m.

617-565-6700.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 617-565-6701.